

Florida Deepwater Horizon Response and Recovery Workgroup #6: Examination of Adequacy of Criminal & Civil Penalties of Offenses that Caused or May Arise Out of the Current Environmental Disaster

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Task: Examine the adequacy of criminal and civil penalties of offenses that caused or may arise out of the current disaster.

Work Plan for Weeks 1 – 5

I. Week 5 (August 23-27)

- a.** August 23rd - Conference Call, 10:00 am (Conference call number 888-808-6959 – Code 4883088) – Discuss draft recommendations/potential legislation.

Summary of Week 5 Activities:

Workgroup held a conference call on August 23rd to discuss the issues raised during the August 9th workgroup meeting and to discuss initial recommendations that will be included in the final report. Among those participating in the conference call were representatives from the Department of Environmental Protection, the Florida Fish and Wildlife Conservation Commission, the Office of the Attorney General, the Office of Statewide Prosecution, and the Florida Prosecuting Attorneys Association. Background information regarding the conference call may be found on the [workgroup's resource page](#).

Began drafting the final report

II. Week 4 (August 16-20)

- a.** Seek input on draft recommendations from Attorney General / Office of Statewide Prosecution staff, state attorneys, executive agency personnel, local government officials, Water Management District personnel, other stakeholders.
- b.** Distribute draft legislation / recommendations to workgroup members.

Summary of Week 4 Activities:

Continued researching the issues raised during the August 9th workgroup meeting (see Week 3 summary below).

Drafted and distributed to the workgroup an issue brief on each of the issues raised during the August 9th workgroup meeting. A copy of the brief may be found on the [workgroup's resource page](#).

Conferred with the Florida Department of Environmental Protection, the Attorney General's Office, the Office of Statewide Prosecution, and local assistant state attorneys regarding various issues contained in the issue brief.

Met with representatives of the Florida Prosecuting Attorneys' Association to discuss whether the jurisdiction of the Office of Statewide Prosecution should be expanded.

Contacted each of the other 49 states to determine who prosecutes environmental crimes in each state, and drafted a report outlining the findings. A copy of the report may be found on the [workgroup's resource page](#)

III. Week 3 (August 9-13)

- a. August 9th - Organizational/Informational Meeting/Conference Call, 10:00 am – 3:00 pm, 404 HOB (Conference call number 888-808-6959 – Code 4883088)
 - i. Provide the workgroup with a comprehensive overview of Florida's current criminal laws and civil penalties that relate to the current environmental disaster, as well as an overview of federal and other state laws.
 - ii. Roundtable discussion with legislative staff, Attorney General personnel, Office of Statewide Prosecution staff, State Attorneys, personnel from various state agencies, and other stakeholders regarding the adequacy of the criminal and civil penalties of offenses that caused or may arise out of the current environmental disaster.
 - iii. Discuss initial ideas as to what should be done to ensure that the criminal and civil penalties are adequate.
- b. Based on the information gathered and the input from the participants of the August 9th meeting, begin identifying options for legislative action, including drafting legislation and/or other recommendations.

Summary of Week 3 Activities:

Workgroup met with representatives from the Florida Department of Environmental Protection (DEP), the Florida Fish and Wildlife Conservation Commission (FWC), the Office of the Attorney General, the Office of Statewide Prosecution (OSP), and assistant state attorneys from the 1st and 11th Judicial Circuits on August 9th. In addition, prepared a brief on the jurisdiction of the Office of Statewide Prosecution and whether such jurisdiction should be expanded to include environmental crimes. A summary of the meeting and a copy of the brief may be found on the [workgroup's resource page](#).

Researched and began drafting a report on the following issues in preparation for the August 23rd conference call:

- Whether the jurisdiction of the OSP should be expanded. If so, in what way (e.g., should it be expanded to include all environmental crime or only specific environmental crimes, could the OSP be authorized to prosecute crimes that occur only in one jurisdiction, etc). Would expanded jurisdiction apply retroactively?
- Whether the statute of limitations for fraud-related crimes needs to be extended.

- Whether enhanced penalties should apply to crimes committed during a state of emergency.
- Whether there is a need for a new criminal offense that would address instances in which persons steal stockpiled emergency materials.
- How the state could better train its law enforcement officers to recognize and investigate environmental crimes (e.g., modify the Law Enforcement Officer Basic Recruit curriculum to include environmental crime training).
- Whether pollution offenses should/could be strict liability offenses.
- Whether the penalties for *willfully* polluting and polluting due to *reckless indifference or gross careless disregard* should be the same (they are currently different).
- Whether there should be a distinction between commercial polluters v. private/recreational polluters for purposes of assessing penalties.
- Whether the current civil penalties should be updated to reflect the current economy.
- Whether the current civil penalties should be assessed based on volume of pollutants discharged or amount of damage caused.

IV. Week 2 (August 2-6)

- a. Continue research and continue consultations with the above-listed entities.
- b. Research other state's criminal environmental disaster laws.
- c. Prepare for Week 3 Organizational / Information Workgroup Meeting.

Summary of Week 2 Activities:

Continued researching state and federal criminal environmental disaster laws. In addition, researched Alabama and Mississippi's statutes to compare their criminal environmental disaster laws to Florida's existing laws. Held a telephone conference with Thomas Watts-Fitzgerald, Assistant United States Attorney, regarding federal environmental crimes

V. Week 1 (July 26-30)

- a. Research existing state and federal environmental disaster laws that impose criminal and civil penalties.
- b. Consult with the following regarding the adequacy of Florida's environmental disaster laws that impose criminal and civil penalties: Attorney General / Office of Statewide Prosecution staff, state attorneys, executive agency personnel, local government officials, Water Management District personnel, other stakeholders.
- c. Compile and distribute an informational packet to workgroup members that contains an overview of the existing state and federal environmental disaster laws that impose criminal and civil penalties.

Summary of Week 1 Activities:

Consulted with the following entities:

- Attorney General's Office, regarding expanding the jurisdiction of the Office of Statewide Prosecution to include environmental crimes.
- Florida Department of Environmental Protection, regarding Florida's current criminal environmental disaster offenses.

- Florida Fish and Wildlife Commission, regarding Florida's current criminal environmental disaster offenses and the enforcement of such offenses.
- Gary Winston, Assistant State Attorney – 11th Judicial Circuit, regarding Florida's current criminal environmental disaster offenses and how they are prosecuted.
- State Attorney's Office – 1st Judicial Circuit, regarding Florida's current criminal environmental disaster offenses and the August 9th meeting.
- Senate Criminal Justice Committee staff, regarding state and federal criminal environmental disaster offenses.
- Northwest Florida Wastewater Management District, regarding the August 9th meeting.
- Florida Association of Counties, regarding August 9th meeting.

Staff also compiled and distributed an informational packet to workgroup members containing an overview of the existing state and federal environmental disaster laws that impose criminal and civil penalties. The information may be found on the [workgroup's resource page](#).